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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,989	10/23/2003	Ramiro Arrez	0343-0035	2465

26568 7590 12/21/2006

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EXAMINER

KEENAN, JAMES W

ART UNIT

PAPER NUMBER

3652

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/21/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/691,989

Applicant(s)

ARREZ ET AL.

Examiner

James Keenan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                            |                                                                                         |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                           | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/03/06 has been entered.
3. Claims 14-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szinte in view of Antal, and further in view of Ahrens, Christenson, or Schreiber et al, all previously cited.

Szinte shows in figures 8-10 a grasper for inverting and dumping a refuse receptacle, comprising support 150 mounted to a lifter 106, first and second gripper arms 152a-b, and hydraulic actuator 154, wherein the gripper arms move between a first position in which they extend away from each other for receiving the refuse receptacle therebetween and a second low profile position in which they lay generally flat against the support for storage, (see col. 14, line 46 to col. 15, line 3).

Szinte does not show the first arm to define an arm-receiving region between portions of which the second arm is received in or "nests" when in the second position.

Antal shows a grasper mounted to a lifter, comprising support 30, lifter 22, first and second gripper arms 27, 28, and hydraulic actuator 33, wherein the gripper arms move between a first position (fig. 3) in which they receive an article to be gripped therebetween and a second position in which they lay flat against the support for storage (fig. 4). Either gripper arm of Antal can be seen as having an arm-receiving region in which the other arm is located when in the second position.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have modified Szinte such that the arms nested together when stored, as shown by Antal, as this would simply be an art recognized alternate equivalent means of compactly storing the arms.

However, Szinte as modified does not show the first gripper arm to define an arm-receiving region between portions of which the second gripper arm nests.

Ahrens (fig. 2), Christenson (figs. 4-5), and Schreiber et al (figs. 4-5) all show refuse receptacle gripper arms in the same environment as Szinte which comprise a first arm consisting at least partially of two spaced members defining an opening or space therebetween in which a second arm at least partially nests.

It would have been obvious for one of ordinary skill in the art at the time of the invention to have further modified the apparatus of Szinte such that the first arm thereof included two spaced members defining an opening in which the second arm could nest when in the second position, as shown by Ahrens, Christenson, or Schreiber et al, as this is a well known and desirable gripper arm configuration for refuse collecting vehicles.

Re claims 17-18, the features are shown substantially by Szinte. Although the arms define a continuous curve rather than a linear portion extending from the fixed end and an angled portion at the free end, the concept of having the free ends lay behind the plain of the support when in the second position to avoid obstructions is the same, and thus the particular shape of the arms is considered an obvious design expediency.

Re claim 22, the use of a rotary hydraulic actuator for rotating the lift arm structure is considered an obvious alternate equivalent design expediency.

4. Applicant's arguments filed 11/3/06 have been fully considered but they are not persuasive. Applicant argues that not only do none of Ahrens, Christenson, or Schreiber et al show gripper arms that nest when in the storage position, but that they are incapable of doing so. This is not persuasive. First of all, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Both the primary and secondary references already show the arms folded together when in the low profile storage position, and thus the combination thereof would clearly also suggest doing so when "nested". Secondly, even though the tertiary references may not show the arms folded or "nested" together when in the storage position, there is no reason why one of ordinary skill in the art would conclude that utilizing the nested type of arms shown by

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the tertiary references would require the storage position of the arms to extend away from each other. It would clearly be undesirable for the arms of Szinte to extend away from each other when in the storage position. Finally, although applicant asserts that the arms of the tertiary references are incapable of being nested when in the storage position, no valid reasoning is provided to back up this statement. The examiner is of the opinion that the arms of at least the Ahrens and Schreiber et al references are capable of nesting together in a storage position.

5. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

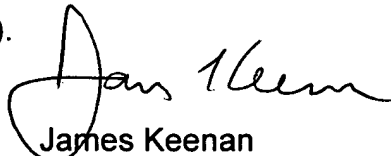
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Keenan whose telephone number is 571-272-6925. The examiner can normally be reached on (schedule varies).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James Keenan  
Primary Examiner  
Art Unit 3652

jwk  
12/18/06